

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-1569

SHKEENA JEFFERS

vs.

NOREEN NOWAK-MORAN.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Shkeena Jeffers commenced this action in the small claims division of the Housing Court, alleging that she had leased certain premises from the defendant, Noreen Nowak-Moran, and that those premises were not in sanitary or habitable condition at the time she was to take possession. The matter was tried to a magistrate who found for Jeffers, awarding damages of \$1,575. Nowak-Moran claimed a trial de novo before a jury of six. The jury found in Jeffers's favor, awarding Jeffers damages of \$1,325. After the trial judge denied her motion for a new trial, Nowak-Moran noticed an appeal to this court, where she appeared pro se.

Nowak-Moran represents in her brief that the trial judge allowed the jurors, after Nowak-Moran testified, to submit written questions to the judge. But, according to Nowak-Moran,

the judge allowed Nowak-Moran to respond to only two of the numerous questions submitted. Nowak-Moran argues that the judge's refusal to put to her all of the jurors' questions was improper because (i) it denied her an opportunity to respond; and (ii) some of the questions would have demonstrated that at least one of the jurors had an insufficient understanding of the English language and should have been disqualified. She also asserts that the judge failed to retain all of the questions posed.

An appellant has the duty to furnish a sufficient record and forfeits consideration of any contention for which the record is deficient. Arch Med. Assocs., Inc. v. Bartlett Health Enters., Inc., 32 Mass. App. Ct. 404, 406 (1992). The essential problem here is that Nowak-Moran has not furnished a trial transcript. See Rule 7 (g) of the Uniform Small Claims Rules (2009) ("All small claim proceedings shall be recorded in accordance with applicable rules of court"). Nor has Nowak-Moran availed herself of any alternative method of reconstructing the evidentiary record. See Mass. R. A. P. 8 (c), (d), as amended, 378 Mass. 932 (1979). Without a record of the testimony or representations at the trial, we have no basis to conclude that the judge erroneously declined to put any juror questions to Nowak-Moran, failed to mark any question as an exhibit, or improperly declined to disqualify any juror. Nor

are we, without a complete trial account, able to conclude that any error had prejudicial effect. See G. L. c. 231, § 119 ("No error . . . is ground for modifying or otherwise disturbing a judgment or order unless the appeals court . . . deems that the error complained of has injuriously affected the substantial rights of the parties"). We have considerable sympathy for self-represented litigants like Nowak-Moran, who at oral argument represented that she did not provide us a transcript because of an understandable but mistaken belief that it would be transmitted by the trial court. Still, because we lack a transcript, there is an insufficient record before us to support a conclusion that any prejudicial error occurred in the trial court, and we are therefore bound to affirm.

Judgment affirmed.

Order denying motion for new trial affirmed.

By the Court (Rubin,  
Desmond & Ditkoff, JJ.<sup>1</sup>),

  
Clerk

Entered: July 17, 2019.

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<sup>1</sup> The panelists are listed in order of seniority.